IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 831 of 1997

with

CRIMINAL APPEAL No. 833 of 1997

with

CRIMINAL MISC. APPLICATION NO.1121 OF 1998
in
CRIMINAL APPEAL NO.833 OF 1997

For Approval and Signature:

HONOURABLE MR.JUSTICE R.P.DHOLAKIA

HONOURABLE MR.JUSTICE SHARAD D.DAVE

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge?

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KISHORE SURYAKANT THAKKAR - Appellant(s)
Versus
STATE OF GUJART - Opponent(s)

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Appearance :

CRIMINAL APPEAL NO.831 OF 1997

MR SA BAQUI for Appellant
MR RC KODEKAR, APP for Opponent

CRIMINAL APPEAL NO.833 OF 1997

MR AD SHAH for Appellant
MR RC KODEKAR, APP for Opponent

CRIMINAL MISCELLANEOUS APPLICATION NO.1121 OF 1998 IN CRIMINAL APPEAL NO.833 OF 1997

MR RC KODEKAR, APP for State
MR AD SHAH for original accused No.2

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CORAM : HONOURABLE MR.JUSTICE R.P.DHOLAKIA

and

HONOURABLE MR.JUSTICE SHARAD D.DAVE

Date : 4-10-2006

COMMON CAV JUDGMENT

(Per : HONOURABLE MR.JUSTICE R.P.DHOLAKIA)

1. Criminal Appeal No.831 of 1997 under Sec.374 of the Code of Criminal Procedure (`the Code' for short) has been filed by the appellant-original accused No.1-Kishore Suryakant Thakker, (hereinafter referred to as “the accused No.1” for short) who has been convicted to suffer R.I. for life and to pay a fine of Rs.5,000/-, in default, to suffer R.I. for 3 months for the offence punishable under Sec.302 of IPC and also to suffer R.I. for 2 years and to pay a fine of Rs.5,000/-, in default, to suffer R.I. for 3 months for the offence punishable under Sec.201 of IPC vide judgment and order dated 8th July, 1997 passed by the

learned Addl. City Sessions Judge, Court No.11, Ahmedabad, in Sessions Case No.143 of 1995.

2. Criminal Appeal No.833 of 1997 under Sec.374 of the Code has been filed by the appellant-original accused No.2-Padmini Mahendrabhai Gadda (hereinafter referred to as “the accused No.2” for short), who has been acquitted for the offence under Sec.302 of IPC and has been convicted under Sec.301 of IPC to suffer R.I. for 2 years and to pay a fine of Rs.5,000/-, in default, to suffer R.I. for 3 months vide judgment and order dated 8th July, 1997 passed by the learned Addl. City Sessions Judge, Court No.11, Ahmedabad, in Sessions Case No.143 of 1995.

3. The case of the prosecution in short is that a complaint was filed by the complainant-Pradip Ratilal Kamdar on 12-12-1994 before P.I. of Navrangpura Police Station alleging that his sister Padmini and one Mahendrabhai had a love marriage in 1981 and which was accepted by his family members. Initially they resided in the house of complainant. However, they started to reside in Shakuntal Apartment, Near C.N.Vidyalay, Ambawadi, with their two daughters, Ami and Puja aged about 8 and 4 years respectively, studying in Vandana

School where Mahendrabhai had started a health club namely, P.M.Health Club before 4-5 years in addition to the one situated near St.Xavier School, near Chitranjan Society, Naranpura. A person named Kishore Thakkar residing in Naranpura area was employed in said P.M.Health Club prior to 10 months. Before last Diwali, Padmini told wife of the complainant to get separated from Mahendrabhai as she did not like to stay with him. However, when wife of the complainant told her not to do so as she had a love marriage and had two children out of it and also as their P.M.Health Club was nicely running, Padmini told that one Kishore working in the said Health Club was keeping her children nicely. Thereafter, complainant and his wife met Mahendrabhai and inquired about Kishore. Mahendrabhai told that Kishore was being treated as a family member. They told him not to give such facility to an outsider and he agreed to the same. Thereafter, when Mahendrabhai and Padmini came to the house of complainant, Padmini admitted about her illicit relation with Kishore. Kishore was therefore removed from service. During last Diwali, Padmini and Mahendrabhai along with their children went to Mahabaleshwar. On their coming back, as it was told by

Mahendrabhai to the complainant about the contact being still continued by Padmini with Kishore, the complainant and his wife told Padmini to leave everything. On previous day at 12 noon, Padmini and Mahendrabai with their children came to the house of complainant for lunch and returned at about 2.30 p.m. Then Mahendrabhai had a talk over phone with wife of the complainant at about 5.30 p.m. and next with the complainant at about 8.30 to 9.00 p.m. as a regular talk. When wife of the complainant tried to inquire about the health of younger daughter of Padmini, phone was found engaged and when she got the connection at 10.30 a.m., wife of the complainant asked Padmini about Mahendrabhai. At that time, Padmini informed that he had gone to Naranpura Health Club. On being asked about the telephone getting engaged, she told that it was because of the telephone wire having come out from the socket while cleaning. This fact was informed to the complainant by her when he came for lunch at about 2.00 p.m. on the same day. Since the complainant became suspicious, he asked Padmini about Mahendrabhai at about 3.00 p.m. when she informed that Mahendrabhai had gone to Bombay. Hearing this, he became more

suspicious as Mahendrabhai did never use to go out of Ahmedabad for the last 14 years without keeping him informed. They however presumed that Mahendrabhai might have left home after quarrelling with Padmini about Kishore and, therefore, they came to Ambavadi Health Club at about 4.00 p.m. When they rang the bell, Padmini opened the door and they went inside. Inside the room, they saw younger daughter Puja lying near the dining table having fever while Padmini went to the bed room. The complainant asked Padmini as to why Mahendrabhai went to Bombay. However, the reply was that Mahendrabhai went to Bombay in Karnavati at about 4.00 a.m. and would be returned on the next day evening. At that time when wife of the complainant told Padmini about her telling in the morning that Mahendrabhai went to Naranpura Health Club, it was told by her that Mahendrabhai did not want anybody to be informed about his visit to Bombay. Since the time was 4.00 p.m., the complainant asked Padmini to bring daughter Ami from school. She instead told that Minaben would bring her. However, due to persuasion, she reluctantly went to bring her daughter. He thereafter had a round in the bedroom. He saw the bathroom locked from outside and though the handle

was there, upper side of stopper was also put. He opened the said stopper and tried to open the door but could not be opened as he felt it to be locked from inside. Suddenly, the door was opened from inside and Kishore, who had a relation with Padmini and who put up black bush shirt with pen button and having a bandage in his hand, pushed the complainant and came out of the bathroom. When they tried to catch him, he pushed them away and ran out and in the process, his bush shirt came out on the floor. They saw his license in the pocket of said bush shirt. Though he went after him upto the gate of said flat, he saw Kishore running with only pants on his body and catching a rickshaw. He thereafter came back and went inside the bathroom and saw dead body of Mahendrabhai in a pool of blood. Since Padmini did not return, he went to call her leaving his wife and Puja there, but he could not see her at School. He therefore brought Ami from School and informed his father about the incident. Thereafter, he went to Ellisbridge Police Station and informed P.I., Shri Gohil about the incident. Shri Gohil then informed P.I., Navrangpura Police Station. On his reaching the Health Club, P.I., Navrangpura Police had already reached there and

complaint was given to the P.I. there itself. Thereafter, same has been sent to Navrangpura Police Station for registering the offence and offence was registered as Navrangpura Police Station I.C.R.No.759 of 1994. He started further investigation and recorded statements of various persons. He also prepared inquest panchnama in presence of panchas and also made arrangements to send dead body of the deceased for post mortem. He also prepared panchnama of scene of offence, etc. During the course of investigation, muddamal was seized by drawing panchnama to that effect, sent the same to FSL, collected admitted handwriting of accused Kishore and tried to catch accused Kishore and Padmini at various places. After a considerable period, the accused were arrested and thereafter they were taken to the places of their visit after the incident and several documents and oral evidence of various persons including specimen handwriting of the accused were collected and sent to the handwriting expert. On receiving the post mortem note and other reports, same were kept in investigation file. Upon completion of investigation, he submitted the charge sheet against the accused in the Metropolitan Magistrate Court No.9,

Ahmedabad.

4. As the offence alleged against the accused was exclusively triable by the Court of Sessions, the learned Metropolitan Magistrate committed the case to the Court of Sessions at Ahmedabad City where it was numbered as Sessions Case No.143 of 1995 and transferred to learned Addl. City Sessions Judge, Court No.10 for trial. The learned Addl. City Sessions Judge framed charge against the accused at Ex.4. The accused pleaded not guilty to the charge and claimed to be tried.

5. To prove the case against the accused, the prosecution examined 48 witnesses in all namely, P.W.1 Dr.Dilip Manubhai Desai Ex.17; P.W.2 Ramalakshman Girdavan Yadav Ex.21; P.W.3 Pradip Ratilal Kamdar Ex.22; P.W.4 Rajendra Hiralal Shah Ex.23; P.W.5 Surendrasinh Gambhirsinh Gohil Ex.30; P.W.6 Navabahmad Rafiyuddin Shaikh Ex.31; P.W.7 Yogesh Pannalal Shah Ex.32; P.W.8 Vinodkumar Lajjaram Gupta Ex.33; P.W.9 Manoj Ishwarbhai Ex.36; P.W.10 Jaswantbhai Babalal Vohra Ex.37; P.W.11 Rajendra Keshavlal Ex.38; P.W.12 Nayamesh Liladhar Joshi Ex.39; P.W.13 Devendrabhai Kanjibhai Jhaveri Ex.46; P.W.13A Kantilal Mafatlal Thakor Ex.51; P.W.14 Balvirsinh Umedansinh Rajput Ex.53; P.W.15 Dilipsinh

Taprabhatsinh Darbar Ex.56; P.W.16 Rannaben Shaileshkumar Gandhi Ex.63; P.W.17 Anand Pankajbhai Sheth Ex.68; P.W.18 Dharmendra Pravinchandra Shah Ex.71; P.W.19 Kanubhai Somabhai Valand Ex.72; P.W.20 Dr.Devan Govindbhai Desai Ex.76; P.W.21 Dashrathkumar Vadilal Thakkar Ex.78; P.W.22 Maganbhai Madubhai Limbachia Ex.79; P.W.23 Minaben Dipakbhai Desai Ex.83; P.W.24 Hardik Harivadanbhai Raval Ex.84; P.W.25 Banaji Kanaji Thakore Ex.85; P.W.26 Chaudhary Kuljibhai Natahubhai Ex.87; P.W.27 Jay Ashwinbhai Choksi Ex.88; P.W.28 Ibrahimbhai Nasirbhai Ex.93; P.W.29 Kuljibhai Jethabhai Patel Ex.95; P.W.30 Nayanaben Harnishbhai Shah Ex.97; P.W.31 Somaji Panaji Ex.101; P.W.32 Suryakant Chimanlal Vora Ex.103; P.W.33 Dansinh Kulaji Rajput Ex.105; P.W.34 Ami Mahendrabhai Gadda Ex.112; P.W.35 Vaghumal Jawaharlal Bhojvani Ex.118; P.W.36 Yogeshkumar Kantilal Shah Ex.120; P.W.37 Parsottamdas Jagjivanram Rami Ex. Ex.122; P.W.38 Ranaji Ramaji Thakor Ex.123; P.W.39 Ramji Rupsing Ex.124; P.W.40 Jagdishkumar Amratlal Soni Ex.127; P.W.41 Jagdish Sundarlal Parmar Ex.130; P.W.42 Mukesh Nandshankar Ex.135; P.W.43 Amarsinh Ramsaransinh Chandravanshi Ex.140; P.W.44 Dipak Prabhudas Shah, Ex.146; P.W.45

Jagdishbhai Jethabhai Patel Ex.147; P.W.46 Jayantilal Hiralal Ex.156; P.W.47 Vishnubhai Parmanand Ganjani Ex.160 and P.W.48 Police Inspector, Narayansinh Bhavansinh Parmar Ex.164. Prosecution also relied upon various documentary evidence such as complaint, inquest panchnama, panchnama of place of offence, clothes attached from the dead body of deceased, panchnama of house of Gita-sister of accused No.1, panchnama of place of offence in presence of FSL expert, the things attached from that place, other things recovered during panchnama, handwriting of accused No.1 taken in presence of panchas, panchnama of various places where accused stayed, record of Dharmashala and hotels attached under the panchnama, panchnama of weapons were recovered at the instance of accused No.1, opinion of FSL expert of various items, report of handwriting experts, etc. The accused however did not examine any witness. On submission of closing purshis by the prosecution, learned Addl. City Sessions Judge, recorded the further statement of the accused under Sec.313 of Cr.P.C. Thereafter, upon hearing the learned counsel appearing for the respective parties, learned Addl. City Sessions Judge, Ahmedabad, delivered the

impugned judgment.

6. Being aggrieved and dissatisfied with the conviction for the offence under Sec.302 IPC, the accused No.1 preferred Criminal Appeal No.831 of 1997 through learned counsel, Mr.S.A.Baqui, whereas accused No.2 preferred Criminal Appeal No.833 of 1997 against her conviction for the offence under Sec.201 IPC to undergo sentence of 2 years RI with a fine of Rs.5,000/- in default to undergo 3 months RI through learned counsel, Mr.A.D.Shah. It is required to be noted that State did not prefer any appeal against the acquittal of accused No.2 for the offence under Sec.302 IPC.

7. When both the aforesaid appeals came up for admission hearing, this Court vide order 30-3-1998 admitted the appeals and issued notice for enhancement of sentence awarded to the original accused No.2 by the learned Addl. Sessions Judge under Sec.201 of IPC in Criminal Appeal No.833 of 1997 and it has been numbered as Criminal Miscellaneous Application No.1121 of 1998 in Criminal Appeal No.833 of 1997.

8. As both the appeals and the Criminal Misc. Application arose out of the same judgment and order dated 8-7-1997 passed in Sessions Case No.143 of 1995 by the learned Addl.

City Sessions Judge, Ahmedabad, they were heard together and are being decided by this common judgment.

9. Heard learned counsel, Mr.S.A.Baqui, for the original accused No.1 in Criminal Appeal No.831 of 1997, Mr.A.D.Shah, for the original accused No.2 in Criminal Appeal No.833 of 1997 as well as in Cri.Misc.Appln.No.1121 of 1998 in Criminal Appeal No.833 of 1997 and learned APP, Mr.R.C.Kodekar, for the respondent-State in all the three matters. We have been taken to various oral as well as documentary evidence.

10. Before proceeding further with the matter, we would deal with the oral as well as documentary evidence led by the prosecution. In this case, prosecution examined in all 48 witnesses and also placed reliance upon various documentary evidence, detailed description of which has been given by the court below in the impugned judgment.

11. To prove the aspect of homicidal death of the deceased, the prosecution examined Dr.Dilip Madhubhai Desai at Ex.17, who performed post mortem on the dead body of the deceased on 13-12-1994. He deposed that he found the dead body with various bloodstained clothes on it having 17 cut

marks. He noticed 50 external injuries and 10 internal injuries on various parts of the body of the deceased and all those injuries were anti-mortem. According to him, external injuries Nos. 13, 14, 16, 18, 20, 21, 28 and 30 were sufficient to cause death in the ordinary course of nature. He deposed that those injuries were possible by Rampuri knife. He gave cause of death as as a result of shock and hemorrhage followed stab injuries sustained by the deceased. Through this witness, prosecution proved post mortem report Ex.18 as well as inquest panchnama.

12. From the above referred evidence, prosecution was able to establish that death of the deceased was homicidal. Both the accused did not dispute this point in the court below as well as this Court.

13. Out of the witnesses examined by the prosecution, first set of witnesses is the witnesses through whom medical evidence has been proved by the prosecution namely, the doctor who performed the post mortem and panchas in whose presence inquest panchnama was carried out. The second set of witnesses is for proving the injuries sustained by the accused No.1 and the treatment taken by him. The third set of witnesses is for proving the circumstantial

evidence as the case is based on circumstantial evidence. There is a child witness i.e. daughter of the deceased and the accused No.2 named Ami Gaddha aged about 6 years at the time of incident, who, according to the prosecution, was in the bed room and was the eye witness of incident. She was examined in the Court after a period of three years. Except her, there is no other eye witness. There are other evidence, oral as well as documentary, starting after accused No.1 ran away from the bath room of bed room of the deceased in which the dead body of the deceased Mahendrabhai was found till the accused were arrested after a period of one and half months. Last set of witnesses is for proving the accused No.1's willingness to show the weapon alleged to have been used by him in the commission of offence, discovery panchnama of the weapon recovered from a small pit dug in the Sabarmati river, report of FSL people regarding the cloth, evidence of Executive Magistrate and other officials like police Officers who were discharging their job as part of their official duty. We will discuss the relevant evidence step by step.

14. The evidence led by the prosecution clearly established that the complainant is the

brother of accused No.2 and brother-in-law of Mahendrabhai. He has been examined by the prosecution at Ex.22 wherein he narrated the family background of Mahendrabhai and his sister i.e. accused No.2 by deposing that the marriage between Mahendrabhai and Padmini was a love marriage which was solemnized in the year 1981. They resided at the house of complainant for five years. Two daughters were born out of said wedlock named Ami and Puja. He deposed that Mahendrabhai was having a Health Club at Chitarajan Society, Near St.Xavier School, Naranpura. Thereafter, he started another Health Club namely P.M.Health Club in Shakuntal Apartment at Ambawadi and he and his family were residing there in the said apartment. He further deposed that he, Padmini and Mahendrabhai know Kishore-accused No.1 as he was serving in the P.M.Health Club, Ambawadi, run by Mahendrabhai. The evidence of the complainant further established that before one month of the preceding Diwali, when Padmini came to his house, she told the complainant's wife that she was not finding comfortable to stay with Mahendrabhai and wanted to separate from him. Complainant's wife advised her that she had children and their business of

Health Club was also running well and hence, she should not talk in this manner. At that time, accused No.2 told that a person named Kishore serving in the Health Club (accused No.1) was keeping her children well than Mahendrabhai. The complainant was also present at that time. The evidence further established that the complainant thereafter inquired about Kishore from Mahendrabhai when he replied that he was just like a family member and, therefore, the complainant advised him not to give more relaxation to an outsider. On the next day, when the deceased and the accused No.2 came to the house of the complainant, they had a talk in respect of Kishore. At that time, Padmini told in presence of Mahendrabhai that she would not keep any relation with Kishore and would leave everything. Thereafter, Kishore (accused No.1) was removed from service of P.M.Health Club. His evidence further established that during Diwali days, Mahendrabhai and Padmini went to Mahabaleshwar and after 8-10 days of their coming back, Mahendrabhai informed the complainant that Kishore and Padmini were still maintaining relations and were meeting. Hence, wife of the complainant told Padmini that it was not good and she

should leave that relation.

15. To prove the above relation between accused No.1 and accused No.2 and to strengthen the evidence of the complainant, prosecution examined an employee of P.M.Health Club serving along with accused No.1 namely Hardik Harivadanbhai Raval as P.W.24 at Ex.84, who used to exchange chits between the accused No.1 and the accused No.2. He supported the say of the complainant in paragraphs 2 and 3 of his deposition. He categorically deposed that he has been used as a mediator in exchanging chits between the accused Nos.1 and 2. He was knowing about their love affairs and thick relation being maintained by them.

16. In the background of the complaint as well as the oral evidence of the complainant and witness Hardik Raval, the prosecution proved the motive and established that Kishore i.e. accused No.1 and Padmini i.e. accused No.2 had love affairs since long. They came in contact with each other as accused No.1 was serving in the Health Club of deceased, the husband of accused No.2. Inspite of intervention and persuasion from family members and husband of the accused No.2 to leave relations with accused No.1, the accused No.2 did not accede to and continued the relations with accused No.1.

It was established that Mahendrabhai was a hindrance in their relations. At this stage, it should be well remembered that death of the deceased was homicidal and his dead body was found from the bathroom of his bed room.

17. To prove the guilt of the accused and to establish the link in the chain of circumstances, prosecution examined several witnesses of which, first important witnesses is the eye witness Ami, daughter of accused No.2 as well as the deceased. She categorically deposed that she saw accused No.1 inflicting blows with knife on her father. Her evidence further suggests that incident took place late after midnight of 11-12-1994.

18. Next important witness in this regard is the complainant Pradip Ratilal Kamdar, brother of the accused No.2-Padmini and brother-in-law of deceased. He categorically deposed that on the day of incident, he and his wife went to the house of deceased and accused No.2 to inquire about the health of their niece Puja. The door was opened by Padmini and younger daughter was sleeping near the dining table. They inquired about the deceased and as school time was about to be over, the complainant asked Padmini as to why she was

not going to take her elder daughter from School. Then, the complainant moved in the bedroom and he found the bathroom closed by applying stopper. He tried to open the door by moving the door latch but it was not being opened. Meanwhile, he heard some voice suggesting that stopper is being opened from inside. Door of bathroom was then opened towards the bedroom side and he saw Kishore Thakkar i.e. the accused No.1, who put up black shirt with buttons open and who had a bandage on his right hand, coming out of the bathroom. He pushed the complainant and tried to go out of the bedroom. The complainant shouted and tried to catch Kishore but he tried to run. The complainant's wife came to his rescue and in scuffle, shirt of Kishore fell on the floor and he ran away on bare foot having no cloth on upper side through main door. He was having only black pants on his body. The complainant ran after him upto the main gate and he saw from a distance of his catching a rickshaw and proceeding towards Panjrapole side. The complainant again came back to the house in the main room where shirt of Kishore was fallen. From the said shirt, articles like driving license, diary, etc. were found. Then he went into the bathroom where he saw the deceased

seriously injured in bleeding condition and he was dead. He immediately went to call Padmini back. However, when he reached Vandana School, he could not see her there and hence, he brought Ami back to the house of the deceased. He then phoned to his father and informed about the incident. Thereafter, he went to Ellisbridge Police Station and informed P.I., Shri Gohil, of the incident. As the place of incident was under the jurisdiction of Navrangpura Police Station, P.I., Navrangpura Police Station, came to the place of incident before whom complaint was filed by him.

19. By way of above referred two witnesses, the prosecution proved presence of accused No.1 and accused No.2 in the house of deceased more particularly of accused No.1 in the bathroom of bedroom of the deceased which was locked from inside where dead body of the deceased with severe injuries were found and from where accused No.1 was able to escape.

20. To prove further regarding involvement of the accused, the prosecution examined P.W.2 Ramlaxman Girdhavan Yadav at Ex.21. Initially, in chief examination, he deposed that he is selling 'panipuri' near Vandana School. He deposed regarding the incident by stating that at about 5.00 p.m., a

person on bare foot came running from the Health Club side, he sat in an autorickshaw and went towards Vandana High School having put up black pants with no dress on the upper portion of the body. He took a lady from the School side and proceeded towards Panjrapole. He identified both the accused in the court and stated that the person who came running on bare foot wearing only black pants is the accused No.1 and the lady who boarded in the autorickshaw is the accused No.2.

21. Prosecution also examined Minaben Dipakbhai Desai as P.W.23 at Ex.83. She resides in Nishant Apartment near P.M.Health Club. Her son and daughter study in Vandana School with the daughter of accused No.2 and the deceased. She further deposed that she knew Kishore Thakkar-accused No.1 as he was serving as Instructor in the P.M.Health Club. She identified him before the Court. She further deposed that on 12-12-1994 she accompanied her son at Vandana School and while returning home at about 12.00 noon, she went to the house of Padmini and inquired as to why Puja was not coming to School and she found that Puja was unwell. In the evening at about 4.00 p.m., when she was standing near Vandana School, Padmini was also there. She had put up Punjabi

dress. At that time, a rickshaw came in which Kishore was sitting. He had no dress on the upper portion of body but was having pants. He was having bandage on his right hand. He asked her to call Padmini and she called Padmini. Then Padmini went near the rickshaw. According to her, thereafter, she had not paid any attention as to how Kishore and Padmini went away.

22. Through witness Minaben Desai, prosecution proved that after going out of the house, accused No.1 hired a rickshaw and took Padmini, who was standing near Vandana School, and the rickshaw proceeded towards Panjrapole.

23. Prosecution also examined Yogesh Pannalal Shah as P.W.7 at Ex.32. He deposed that he is having a ready-made cloth shop in the cellar of Zalak Complex, Vasna, Ahmedabad. On 12-12-1994 between 4.00 and 5.00 p.m., a man on bare foot with open body on upper portion and black pants came breathing along with a lady. He needed a T-shirt and ultimately purchased a jersey by paying Rs.25/-. He wore jersey there itself. Money for the jersey was paid by the lady who came with the man and then they went in rickshaw. He identified the person, who had put up black pants with upper portion of body open having bare foot, as the accused

No.1 and the lady who paid the money for T-shirt as the accused No.2 in Court.

24. Prosecution examined another witness Navab Ahmed Rafiyuddin Shaikh as P.W.6 at Ex.31. He deposed that he was running a shoe shop in the name of Golden Footwear near Kalupur Thankshal. On 12-12-1994 at about 6.00 or 6.30 p.m., one person came in rickshaw to buy chappal. He gave him chappal and ultimately price was fixed at Rs.45/-. The lady accompanied him paid Rs.50/- and he returned Rs.5/- back to her. Thereafter, both went in rickshaw. He identified the persons who came to buy chappal as accused No.1 and the lady who paid money for it as the accused No.2 in the Court.

25. To prove further link in the chain of circumstances, prosecution examined Dr.Rajendra Hiralal Shah, P.W.4 at Ex.23. He is a General Medical Practitioner having the dispensary at Haja Patel-ni Pole, Kalupur. Three persons work with him as Compounders and Jasubhai works as Accountant. He deposed that on 12-12-1994 between 1.00 p.m. and 2.00 p.m., a patient, who had an injury on his right hand, came to his dispensary. When he inquired about it, he stated to have caused the said injury when his hand was hit on the mirror of a rickshaw while riding a scooter. The

patient gave his name as Kishore Suryakant Thakkar. He had a big wound on his right hand. He identified the said person as the accused No.1 in the Court. He further deposed that he stitched the wounded portion of his hand, gave TT injunction, dressed it and gave medicines from the dispensary. Prosecution proved case papers and receipt of Rs.120/- received from him as fees through this witness.

26. Prosecution also examined the Accountant working at the dispensary of Dr.Rajendra H.Shah at Ex.37 and proved relevant entry, etc.

27. The panch witness, Chaudhary Fuljibhai Narshibhai was also examined by the prosecution as P.W.26 at Ex.87 to prove the arrest panchnama of accused No.1.

28. Through the afore referred witnesses, prosecution proved that when accused No.1 tried to escape from the house of deceased, his right hand was bandaged. This version has been supported by other witnesses i.e. Minaben Desai, Yogesh Pannalal Shah, owner of cloth shop and owner of shoe shop, etc.

29. To give account for the absconding period from the night of 12-12-2004 till 23-1-1995 i.e. the day on which both the accused were arrested from S.T.Bus Station, Mehsana, prosecution examined several

witnesses.

30. The prosecution examined Kanubhai Somabhai Valand as P.W.19 at Ex.72, Manager of Naisamaj Dharmashala Bahucharaji. According to him, the accused Nos.1 and 2 remained in said Dharmashala on fictitious names. The only thing to be noted in his evidence is that in his cross-examination, he deposed that accused No.1 used to keep the accused No.2 in the room under lock and key. If we go through the whole evidence and the period during which they stayed together there, said say appears to be unbelievable.

31. The prosecution also examined Banaji Kanaji Thakore, Manager of Zilla Panchayat Guest House, Mehsana as P.W.25 at Ex.85; Ibrahimbhai Nasirbhai as P.W.28 at Ex.93, owner of a hotel named Dreamland Hotel situated at Idar-Himatnagar Highway; Suryakant Chimanlal Vora as P.W.32 at Ex.103, Manager of Parshwa Padmavati Dharmashala at Sankheshwar; Ramji Rupsingji as P.W.39 at Ex.124, Manager of Dadavadi Gurumandir Dharmashala at Sankheshwar and Jagdishkumar Amratlal Soni as P.W.40 at Ex.127, Manager of Shree 108, Parshwanath Bhaktivihar Jain Trust Dharmashala at Sankheshwar. These witnesses categorically deposed that accused Nos.1 and 2 were staying in the said guest house on

fictitious names. All of them identified them in test identification parade as well as in Court as the persons stayed in their respective Dharmashalas, hotel, guest house, etc. on fictitious names. Therefore, it cannot be said that they are interested witnesses or chance witnesses but can certainly be said that they are natural witnesses who practically remained in contact with them for reasonable period. It is not that they saw the accused only once and hence would not be able to identify them in test identification parade and in Court. It is neither the case that the accused were taken there for recording their statements qua seizing relevant documents on affording them opportunity by the police. Merely some discrepancy was noticed about the time in holding the test identification parade before the Executive Magistrate, Mr.Parmar, the evidence of all these witnesses cannot be brushed aside especially when prosecution proved through satisfactory evidence on record of their absconding from the night of 12-12-1994 till they were arrested on 23-1-1995 at Mehsana Bus-Station. The panchas also fully supported the say of the prosecution.

32. The prosecution therefore proved that accused Nos.1 and 2 were moving together

from the night of 12-12-1994 till 23-1-1995 presenting themselves as husband and wife and shared a common room. Record shows that they stayed at various Dharmashalas, guest-house, hotel, etc. where lot of people regularly used to visit. If at all the accused No.2 had gone with the accused No.1 against her will, she had ample opportunities to disclose about the incident to anybody during this period of one and half months.

33. The first contention raised by Mr.Baqui was that the accused No.1 is totally innocent and has been falsely involved in the crime in question by the complainant. According to him, the incident had taken place on 12-12-1994. It was contended that the complainant had paid Rs.15.00 lakhs to the deceased and in order to recover the said amount, he had sent four persons at the place of deceased on the date of incident. At that time, the accused No.2 was not in the house. The persons sent by him had a quarrel with the deceased and the deceased was murdered by them. To hide this act and to save their men, the complainant concocted the complaint with the help of Police Inspectors of Ellisbridge and Navrangpura Police Stations, Mr.Gohil and Mr.Parmar respectively, and falsely

involved the accused No.1 in the serious crime.

34. Said contention has been dealt with by the court below from paragraph 25 onwards of the judgment by holding that except the bare allegation, no iota of evidence has been pointed out to support the said allegation. It reflects from the evidence of the complainant and from the discussion of the court below that amount given by the complainant to the deceased was about Rs.1.00 to Rs.2.00 lakhs and which may go up to Rs.5.00 lakhs. It is in the cross-examination of the complainant that the said amount has already been repaid by the deceased. In view of this and in absence of any other cogent evidence to that effect, the contention raised by Mr.Baqui that he hired persons to recover the amount from accused and committed murder of his brother-in-law by involving his sister in the serious crime is untenable. As regards allegations against Police Officers are concerned, it was held by the Court below in para 26 of the judgment that Mr.Gohil was PI of Ellisbridge situated very near to the incident site. It may be noted that the complainant being a layman might not be knowing as to in which jurisdiction of the Police Station the place of incident is

falling for lodging the complaint and hence, if at all the complainant had gone to Ellisbridge Police Station, it does not make any difference nor does it mean that he in collusion with Police Inspectors of Ellisbridge and Navrangpura Police Stations concocted the complaint for falsely involving the accused No.1.

35. It has been contended by Mr.Baqui that the important witnesses are chance witnesses and are persons of the complainant and his family and hence, much weight should not be given to the evidence of those witnesses. Further, for the purpose of proving the absconding period of one and half months of accused Nos.1 and 2, various witnesses have been examined. They are Managers of Dharmashalas, hotel, guest house and they came in contact with the accused only once and hence, they will not be in a position to identify the accused either in TI parade or in Court and hence, their evidence should not be believed. He also raised the contention regarding the time narrated in TI parade by Executive Magistrate. Taking us through the evidence of Executive Magistrate, he contended that opportunities have been provided to all witnesses by showing the accused and thereafter a show has been made that they have been

identified. He also contended that discovery panchnama is improperly drawn in view of the fact that driving license and other articles found from the scene of offence were lying in the P.M.Health Club as he was serving there and same has been used as a documentary evidence in drawing the discovery panchanam and hence, said discovery panchnama is concocted. It has also been contended that the accused No.1 was removed from service since long and hence, his question of killing the deceased only on that ground does not arise and should not be believed.

36. As has been discussed hereinabove, witnesses of various Dharmashalas, hotel, guest house, etc. examined by the prosecution clearly established that accused Nos.1 and 2 stayed at their places as husband and wife on fictitious names. Moreover, all of them identified them in test identification parade as well as in Court. Hence, it cannot be said that they are interested witnesses or chance witnesses. They saw the accused not once but remained with the accused for quite some time during their stay at respective places and hence can be said to be natural witnesses and hence, their versions are required to be believed. Reliance is placed

on 2003 Supreme Court Cases (Cri) 23 in the case of Saradul Singh Vs. State of Haryana wherein it has been held at head notes A and B as under:

"A.Criminal Trial—Appreciation of evidence—Generally-Duty of courts—Held, is to analyse, sift and assess the evidence on record, with particular reference to its trustworthiness and truthfulness, by a process of dispassionate judicial scrutiny adopting an objective and reasonable appreciation of the same, without being obsessed by an air of total suspicion of the case of the prosecution—Courts must undertake a complete and comprehensive appreciation of all vital features of the case and the entire evidence with reference to broad and reasonable probabilities of the case.

B. Criminal Trial—Witnesses-Interested witness-Testimony of—Reliability—Evidence of interested witnesses should be scrutinised more carefully to find out if it has a ring of truth—If the same is found acceptable and seems to inspire confidence in the mind of the court, held, it cannot be discarded totally merely on the ground of certain variations or infirmities or additions and embellishments, unless they are of such nature as to undermine the substratum of the evidence and found to be tainted to the core."

37. On a careful scrutiny of the evidence of aforesaid witnesses keeping in mind the law laid down by the Apex Court hereinabove referred to, it cannot be said that they are interested witnesses. If there is minor discrepancy in the time in holding

the test identification parade before the Executive Magistrate, the otherwise worthy evidence of those witnesses cannot be discarded as they inspire confidence in the mind of the Court. It is to be noted that accused No.1 was dismissed from service of P.M.Health Club since long and hence, there would not arise any question of remaining his articles in the P.M.Health Club after his dismissal. Moreover, articles were seized by drawing necessary panchnama in presence of panchas and said panchas fully supported the say of the prosecution and hence, it cannot be said that panchnama has been improperly drawn nor was it concocted.

38. A contention has been raised by Mr.Baqui that child witness Ami aged about 6 years narrated only two blows having given by the accused No.1 while post mortem note revealed more than 50 blows on various parts of the body of the deceased. Hence, the blows alleged to have been given by the accused No.1 as narrated by the child witness are not proved by way of post mortem note by the prosecution and hence, according to him, she is not a witness of incident. Moreover, she has been examined lastly for the purpose of brushing aside the evidence surfacing against the accused No.2 during the course of evidence as well

as in the cross examination of witnesses.

39. Had the prosecution relied solely on the evidence of child witness Ami aged 6 years at the time of incident for basing conviction, this Court would have accepted the above contention of the learned counsel for the accused No.1. It may be noted that there were many other circumstantial evidence connecting the accused No.1 with the crime in question. It is true that looking to her age and the way in which the incident has taken place, she might not be in a position to see and narrate all the things. However, her presence in her own house at late midnight cannot be discarded. It is true that conviction cannot be based relying solely on her evidence but it can be used as a corroborative piece of evidence and evidence of Ami has been used as such.

40. As far as the contention raised by Mr.Baqui that the incident took place during the day of 12-12-1994 is unbelievable in view of ample oral as well as documentary evidence on record as to the situation of the body, development of rigor motis and also in view of evidence of Minaben Dipakbhai Desai, who visited the place of incident on 12-12-1994 at about 12 noon. It can therefore be said that incident happened late in the night of

11-12-1994.

41. As far as conviction of the accused No.2 for the offence under Sec.201 IPC is concerned, the main contention raised by learned counsel, Mr.A.D.Shah, was that she herself is the victim as her husband has been brutally killed in her and in her daughter's presence. According to him, she has been forcefully taken by the accused No.1 and kept with him for a considerable period of one and half months. He contended that she had not played any role in destroying the evidence and, therefore, her conviction imposed by the court below under Sec.201 IPC is improper and illegal.

42. Learned APP, Mr.R.C.Kodekar, vehemently contended that as both the appeals do not merit any consideration, they are required to be rejected and sentence awarded to the accused No.2 is required to be enhanced.

43. There are evidence to indicate that accused No.2 all throughout remained in the house till she was sent to Vandana School to bring her daughter by her brother i.e. complainant. Her behaviour all the time was calm and cool. If such a serious incident of brutally murdering her husband had taken place against her will, she would have taken the help of others when ample opportunities were there firstly when the

assailants came to her house at night as the evidence indicates that Shakuntal Apartment where P.M.Health Club is situated is having 24 hours security. At the time of incident, natural conduct of the person would have been to raise an alarm. That area being thickly populated, somebody including the Watchman, etc. must have come to her rescue. However, she did not do so. Hence, it might be with her consent the accused No.1 might have entered in her house. Evidence on record also indicates that in the morning when Watchman rang the bell for giving milk bags, Padmini took the milk bags without putting any word to him. Here also, she remained silent. She was having some more opportunity. Evidence indicates that when the complainant, who is the real brother of accused No.2, came to his residence for lunch, his wife informed him that nobody was lifting the telephone from the residence of Padmini and she could be contacted only at 3.00 p.m. When asked about this, it was told by Padmini to the complainant that telephone wire came out from the socket while cleaning the room and it was noticed by her only at 3 p.m. Not only that, when both the complainant and his wife inquired about Mahendrabhai, false excuses were being given by Padmini that

Mahendrabhai went to Health Club at Naranpura. Later she told that she had falsely informed that Mahendrabhai had gone to Naranpura Health Club but he had gone to Bombay. The complainant then clearly told that he had good relation with Mahendrabhai and hence, if Mahendrabhai wanted to go to Bombay, he would have definitely informed him of his visit. Here again, she remained silent. Not only that, when the complainant visited the house of Padmini along with his wife, she was totally safe before them and hence, though accused No.1 was there inside the bathroom having the stopper applied from outside, she had not informed the same nor had indicated slightest sign of the incident. There was further opportunity when accused No.1 went to the dispensary of Dr.Rajendra Shah for taking treatment for the injury sustained by the accused No.1 on his right hand. Said dispensary is situated at Haja Patel-ni Pole, Kalupur, and the admitted distance between Ambawadi and said dispensary would be much more. Evidence shows that accused travelled by public transport i.e. AMTC bus. Therefore, in absence of accused No.1 for nearly 6-7 hours in the house, atleast she could have informed somebody. Moreover, when she was moving in various places, she had ample

opportunities. However, she did not utilise any of these opportunities. All these clearly involve her actively in the crime in question along with accused No.1. It is proved through the independent evidence of Hardik Raval, an employee serving with accused No.1 in P.M.Health Club, Ambawadi, that accused No.2 had intimacy towards accused No.1 and had love affairs with him. According to him, he has been used a mediator for exchanging chits and messages between them. It is on record that after coming from Mahabaleshwar, Mahendrabhai had informed his brother-in-law and his wife about the relations being still maintained by Padmini with Kishore-accused No.1 and their meeting. Therefore again, all the three i.e. the deceased, the complainant and his wife tried to pursue Padmini not to keep any relation with Kishore-accused No.1. Thus, the accused realized that a situation had arisen that these people would never allow their relation to continue and, therefore, they kept this motive in mind. Evidence on record further suggests presence of accused No.1 in the house at the scene of offence that too in the bathroom of bedroom of Padmini and deceased and which has involved him in the crime as the main culprit. Apart from that,

they remained absconding for one and half months and after arrest, accused No.1 voluntarily produced Rampuri knife used in the commission of offence and same has been proved by way of discovery panchnama supported by both the panchas. The doctor, who performed the post mortem on the body of the deceased, opined on seeing the muddamal article Rampuri knife that injuries received by the deceased are possible by way of said knife. There are other evidence on record suggesting that further plan of the accused was to cut the body of the deceased into pieces, put them in various plastic bags and then destroy them. It is also established from the panchnama of scene of offence from where above referred muddamal has been seized by the I.O. in presence of panchas that articles like plastic bag, 'ari' used for cutting iron pipe, big needle, wax thread etc. were there. Apart from that, from the shirt of the accused No.1, muddamal article such as driving license of accused and other documentary evidence were also seized strengthening the say of the prosecution as to the presence of the accused at the time of incident. There are evidence of discovery of weapons which is supported by evidence of panchas and

witness Manoj Ishwarbhai. As regards purchase of chemicals, witness Rajendra Keshavlal Bhatt, owner of the shop, deposed that accused No.1 had come along with one Raju Ravji Parmar and purchased reducer(chemicals). Even search has been made in the house of sister of accused No.1 i.e. Gitaben on 13-12-1994 from where also cogent evidence has been found to support the case of the prosecution. Moreover, blood group of accused No.1 is B+ve which has been proved through the evidence of Dr.Vinod Gupta at Ex.35. It is also proved from the evidence on record including the opinion of expert that clothes i.e. shirt of the accused and his articles were found to have bloodstains of Group-A which admittedly is of the deceased. There are evidence of scientific expert on record also involving the accused No.1. Apart from the above, evidence of Police Inspector, Executive Magistrate, etc. also support the say of the prosecution.

44. It is established during the course of evidence that after the incident, accused No.1 left the house at 7.30 a.m. Witness Minaben Desai also deposed to the effect that when she visited the house of accused No.2-Padmini at 12 noon, no one was present except daughter of Padmini. Moreover,

evidence of Dr.Rajendra Shah also suggests that accused came to his dispensary at 12 noon and was there till about 1.30 p.m. Keeping in mind the distance between Kalupur and Ambawadi and also the evidence of travelling in transport bus, it can be presumed that he must not have come back to the house before 1.30 p.m. after treatment. Therefore, it cannot be believed that the accused No.2 was frightened or succumbed to the threat being administered by the accused No.1 to keep silent in view of the fact that there are ample opportunities for the accused No.2 to inform somebody about the incident first at the time of incident, then when Watchman rang the bell for giving milk bags in the morning and thereafter from 7.30 a.m. till 1.30 p.m. when she was totally free in her house where dead body of her husband was there inside the bathroom. Evidence also showed that accused No.2 sent her daughter to School after preparing food. There are evidence on record indicating the practice being followed by the family to accompany either of them in sending and bringing the children from school. Hence, even though deceased succumbed at night, she must have gone to Vandana School in the morning and came back and remained completely calm and

cool even after arrival of her brother and his wife. Moreover, she had made arrangements to see that telephone was kept dead upto 3.00 p.m. Evidence also established that accused No.2 permitted the accused No.1 to enter into the house enabling him to keep other articles namely, “ari”, plastic bag, wax thread, tin of reducer (chemical), big needle, etc. Thereafter also, she remained silent, went away with the accused No.1, stayed at different public places on fictitious names as husband and wife and absconded for a period of one and half months. From the aforesaid, her active involvement in the crime in question indicating conspiracy has been established by the prosecution. Court below dealt with the same however disbelieved the theory of conspiracy. Even though we are not satisfied with the said reasonings given by the court below, we are not dealing with the same as no appeal has been filed in that respect by the State.

45. In the entirety of the facts and circumstances narrated hereinabove, we are of the opinion that prosecution proved the guilt against the accused Nos.1 and 2 in toto. Hence, conviction and sentence of the accused No.1 for the charge under Sec.302

is just, legal and proper and does not require any interference. Hence, the appeal filed by the accused No.1 is required to be dismissed.

46. It may be noted that accused No.2 was acquitted by the court below for the charge under Sec.302 IPC and convicted only under Sec.201 IPC. As stated earlier, since State did not prefer any appeal against the acquittal for the charge under Sec.302 IPC, we are not in a position to deal with the said aspect.

47. Mr.Shah strongly opposed suo-motu proceedings initiated by the Court for enhancement of sentence of accused No.2. However, at the end of arguments, he submitted his written arguments also contending inter alia that the accused No.2 was convicted for the offence under Sec.201 IPC for abetment of disappearance of evidence of murder committed by the accused No.1 to suffer R.I. for two years. It was further contended that in respect of conspiracy charge, the accused No.2 was not held guilty and was acquitted for the offence under Sec.302 read with Sec.120-B of IPC and no appeal has been filed by the State against the same. It was further contended that the accused No.1 was also acquitted for the offence under Sec.120-B

of IPC and there also, no appeal was filed by the State challenging the acquittal of accused No.1 for the offence of conspiracy. Though this Court issued notice to show cause as to why sentence should not be enhanced by exercising suo-motu powers, it was contended that no notice for exercising suo-motu powers of revisional jurisdiction against the order of acquittal was issued but suo-motu notice was for enhancement of sentence. No suo-motu notice against the conviction of accused No.1 for the offence under Sec.201 IPC has also been issued by the Court. As conviction of the principal offender for the offence under Sec.201 IPC sentencing to suffer R.I. for 2 years has not been found to be grossly inadequate or too lenient, conviction of the accused No.2 sentencing her to suffer 2 years R.I. for the offence under Sec.201 IPC cannot be considered to have been visited with grossly inadequate or lenient sentence. It was further contended that almost 9 years have been passed since the judgement and order of the court below. It was further contended that the accused No.2 has already undergone the sentence imposed upon her. She has two grown up daughters aged 18 years and 16 years with no male member to look after them. It was therefore contended

that the sentence under no circumstances can be considered to be grossly inadequate or too lenient.

48. Reliance was placed on the law settled by the Apex Court in State of A.P. Vs. Thadi Narayana reported in AIR 1962 S.C.240. Certain portions of the judgment reproduced by Mr.Shah in his written arguments reads as under:

“if an order of conviction is challenged by the convicted person but the order of acquittal is not challenged by the State then it is only the order of conviction that falls to be considered by the Appellate Court and not the order of acquittal. Therefore, the assumption that the whole case is before the High Court when it entertains an appeal against conviction is not well-founded and as such it cannot be pressed into service in construing the expression "alter the finding". In S. 423 (1) (b), the expression "alter the finding" has only one meaning, and that is alter the finding of conviction and not the finding of acquittal.”

“... in exercising the powers conferred on it by S.423(1)(b) the High Curt cannot convert acquittal into conviction; that can be done only by adopting the procedure prescribed in S.439. Hence, the High Court acts without jurisdiction in altering the finding an order of acquittal passed in favour of the accused in respect of the offences under Ss.302 and 392 Penal Code, when it is dealing with the appeal preferred by the accused against her conviction under S.411.”

It was held by the Apex Court in the

aforesaid case that if the conviction order is challenged by a convict but his acquittal is not challenged by the State, then, only the order of conviction is to be considered by the Appellate Court and not the order of acquittal. Keeping in mind the above law, we deal with the case of accused No.2.

49. Reliance was also placed on Amar Singh and others Vs. State of Rajasthan reported in AIR 1987 S.C. 2023, head note of which reads thus:

"Accused persons prosecuted for two incidents occurring in one day - In one case trial court acquitting them of charge under S. 307 read with S. 149, I. P. C. and instead convicting them under S. 325 - In another case accused acquitted of charge under S. 302 read with S. 149 - State not filing appeal against acquittal in first case but filing one against second case - High Court could not alter conviction under S. 325 in first case to one under S. 307 in absence of State appeal".

The aforesaid judgment is not applicable to this case as it is about two incidents occurring on a day.

50. Reliance was also placed on Commissioner of Income Tax, Assam Vs. Himangshu Sekhar Chakarvarty reported in AIR 1975 S.C. 15. Extract of the said judgment reproduced reads thus:

"The only offence that could have been committed by A-4 was under Section 201

I.P.C. because after the deceased was put into the jeep he knew fully well that he had been assaulted by the appellants and was being taken away for the purpose of disposal of the dead body. Unfortunately, however, though A-4 was charged under Section 201 he was acquitted by the learned Additional Sessions Judge and even the High Court has not convicted him under that section. No appeal against his acquittal has been filed in this court. In these circumstance therefore it is not possible for us to convict him for the first time under Section 201 I.P.C. in the present appeal".

The role played by the accused is considered by the Apex Court in the aforesaid judgment.

51. Reliance was also placed on Shiv Govind Vs. State of M.P. reported in AIR 1972 S.C.1823 more particularly towards para 9 which reads as under:

"9. It seems clear to us that the High Court had overlooked the principles, laid down by this Court repeatedly, which should govern the exercise of powers of the High Court to enhance sentences imposed by trial Court. In Bad Raj v. State of Uttar Pradesh, (1955) 2 SCR 583 = (AIR 1955 SC 778) this Court observed at page 588-589:

"A question of a sentence is a matter of discretion and it is well settled that when discretion has been properly exercised along accepted judicial lines, an appellate court should not interfere to the detriment of an accused person except for very strong reasons which must be disclosed on the face of the judgment; See for example the observations in Dalip Singh v. State of Punjab (1954 S. C. R. 146, 156) and Nar

Singh v. State of Uttar Pradesh (1955 (1) S. C. R. 238, 241)"".

The above referred decision is governing exercise of powers of the High Court in enhancing sentences imposed by the court below. It was held therein by the Apex Court that if discretion was exercised properly on judicial lines, Appellate Court should not interfere except for very strong reasons.

52. All the aforesaid reported judgments have been gone into detail by us. Keeping in mind the principles laid down therein by the Apex Court, we proceed further.

53. Regarding the sentence imposed on the accused No.2, who is wife of deceased Mahendrabhai, for offence under Sec.201 IP Code, the trial court has awarded 2 years RI and to pay a fine of Rs.5,000/-, in default, to suffer R.I. for 3 months. Since awarding of said sentence has been found to be inadequate, suo-motu proceedings for enhancement of sentence were initiated by this Court numbered as Cri.Misc.Appln.1121 of 1998 in Criminal Appeal No.833 of 1997.

54. We have dealt with the love affairs between the accused No.1 and accused No.2 in detail and, therefore, we are not repeating the same here again. However, we would like to say that said aspect has been proved by the

prosecution with cogent evidence. As far as accused No.1 is concerned, we have upheld this conviction for the offence under Sec.302 read with Sec.201 of IP Code.

55. As far as accused No.2 is concerned, as discussed earlier at length by us, prosecution could prove the guilt of the accused under Sec.201 of IP Code. It is proved that the whole incident took place in the house of deceased and accused No.2 at mid night. Panchnama of scene of offence showed that it is not the case of prosecution that accused No.1 entered into the same after breaking open the lock nor in any other way against the will of accused No.2. Evidence however showed that they were invitees. Evidence further showed that they came with ulterior motive and to fulfill the said motive, they were permitted to enter into the house along with deadly weapons and other muddamals such as plastic bag, cutter, needle, wax thread, chemical, etc. for the purpose of disposal of the dead body and remained in the house till 7.30 a.m. It is to be borne in mind that said muddamals have been seized during the course of panchnama of scene of offence. As per the evidence of Ami, they left at 7.30 a.m. Evidence further showed that thereafter accused No.2

might have gone to school to drop one of the daughters, as is the custom in their family to drop and bring the children either of the parents. Not only that, in the morning, when Watchman of the Apartment came, the accused No.2 did not take his help nor raised any alarm. In the morning when Minaben Desai came, she did not seek any help. On the contrary, she kept the telephone out of order till 3.00 p.m. In short, accused No.1 was outside the house for a considerable time of 6-7 hours. Thereafter also, when her brother and his wife came, though accused No.1 was inside the bath room which was locked from outside, she would have sought their help. However, she did not do so. Apart from that, when she left the house for bringing her daughter from School, she absconded along with accused No.1 for a period of one and half months and stayed together as husband and wife sharing a common room. In view of the above, arguments advanced by the learned counsel for the accused No.2 that she remained silent due to threat being administered by the accused No.1 or because of frightening is neither believable nor acceptable.

56. By way of cogent, reliable and consistent evidence, the prosecution proved that the

accused No.2, wife of deceased Mahendrabhai, by knowing that murder of her husband was committed by accused No.1, caused the evidence of commission of murder of her husband to disappear with the intention of protecting her paramour (the accused No.1) from punishment of either death or imprisonment for life. Though she was knowing fully well that her husband was brutally murdered by the original accused No.1, she did not inform anyone nor filed the complaint. The trial court was therefore justified in convicting the accused No.2 for commission of offence punishable under Sec.201 IPC and her conviction is hereby upheld. The commission of offence under Sec.302 IPC is punishable with death and hence as per Sec.201, the original accused No.2 had incurred liability to be punishable with imprisonment of either description for a term which may extend to seven years and fine. Sec.201 is intended to reach acts to which sections 193 to 195 IPC do not extend. Object of Sec.201 is two-fold (i) firstly to punish person causing disappearance of evidence of an offence committed with the intention of screening the offender from punishment and (ii) secondly to punish persons giving false

information respecting an offence with the aforesaid object. This section looks upon a person screening the offender as an accessory after the fact of commission of serious offence comes to his knowledge and makes him culpable as an offender committing an offence against public justice as the policy of law is that even at the early stage of investigation, nothing should be done which lay false trails or cause the investigation to be hampered or weaken the prosecution and injuriously interfere against public justice. It is required to be noted that trial court has improperly evaluated the evidence on record overlooking not only the object of Sec.201 but also shocking facts of the case leading to murder of deceased by accused No.1 and commission of offence under Sec.201 by accused No.2 and has imposed sentence which is improper and is a miscarriage of justice. Trial Court ought have borne in mind that Sec.201 is joined with Sec.302 of IPC and should have awarded sentence accordingly. For determining the punishment to be awarded under Sec.201, the Court should decide what offence the accused knew or had reason to believe had been committed. In this case, the accused No.2 knew very well that her husband was

brutally done to death by the accused No.1 and caused disappearance of evidence to protect her paramour from punishment under Sec.302 IPC. The accused No.2 as wife of the deceased would have done something to protect her deceased husband. Instead, she protected the offender i.e. the accused No.1. It is to be noted that while awarding sentence, Court should keep in mind all aspects including the role played by the accused, seriousness of the offence committed, continuous act of the accused and ignore the status of the accused against whom commission of serious offence has been proved and then punish the accused and no leniency or liberty be given by the Court. The punishment must fit the crime and a proper punishment must be imposed depending on the level of criminality without comparing the sentence with other accused. Here in this case, we believe that it is a case of miscarriage of justice wherein ultimately a show has been made by the trial court that accused No.2 has been sentenced but imposition of sentence was in such a way as to enable the accused No.2 to come out of judicial custody on the day on which impugned judgment and order of conviction was delivered. Thus, the whole spirit of Sec.201 IPC has been ignored by

the trial court. In view of the above, the sentence imposed on the accused No.2 for the offence under Sec.201 IPC cannot be regarded proportionate or adequate and hence, it has to be enhanced.

57. It was the contention of Mr.Shah, learned counsel appearing for the accused No.2, that no notice for enhancement of sentence imposed on accused No.1 for the offence under Sec.201 IPC has been issued although imposed with the same punishment as that of accused No.2 for commission of said offence and hence, the court has no jurisdiction to enhance sentence imposed on original accused No.2 for commission of offence under Sec.201 IPC.

58. As far as the sentence imposed upon accused No.1 is concerned, he was sentenced to suffer imprisonment for life for the offence under Sec.302 and was also sentenced for the offence under Sec.201 of IPC and since both these sentences were ordered to run concurrently, sentence awarded to accused No.2 cannot be compared with that of accused No.1 especially when she has been convicted for the offence under Sec.201 IPC only. Moreover, cases of both the accused are not similar and stand on different footing. Hence, if such a notice had been issued and the sentence had

been enhanced, that would hardly have served the purpose of justice because enhancement of sentence under Sec.201 IPC would have been ordered to run concurrently. Time and again it has been held by the Apex Court that life imprisonment means imprisonment for whole life of the convict and not fraction of it. An addition of sentence of few years by enhancing sentence in case of one who is sentenced to life imprisonment does not make any substantial difference at all. In view of this, even if sentence imposed on accused No.1 had been enhanced for the offence under Sec.201, no purpose would have been served. Hence, the aspect that no notice was issued for enhancement of sentence imposed on accused No.1 under Sec.201 IPC cannot be considered as a relevant circumstance for considering the question of enhancement of sentence imposed on accused No.2 for commission of offence under Sec.201 IPC.

59. In the result, the sentence imposed on the accused No.2 for the offence punishable under Sec.201 of IP Code is enhanced and she is sentenced to suffer R.I. for seven years and to pay a fine of Rs.7,000/-, in default, to suffer R.I. for two years. She is directed to be taken into judicial

custody within fifteen days from today to undergo the remaining period of her sentence. Criminal Miscellaneous Application No.1121 of 1998 is decided accordingly.

60. As far as Criminal Appeal No.831 of 1997 filed by the original accused No.1 and Criminal Appeal No.833 of 1997 filed by the original accused No.2 are concerned, they are rejected.

61. Office shall place a copy of this judgment in each matter.

(R.P.DHOLAKIA,J.)

(S.D.DAVE,J.)

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